



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DOW Nov-08

DENNIS M. FLAHERTY, ESQ.
OSTRAGER CHONG FLAHERTY & BROITMAN P.C.
570 LEXINGTON AVENUE
NEW YORK NY 10022-6894

COPY MAILED

NOV 18 2008

In re Application of	:	OFFICE OF PETITIONS
Jimmy Lee Long	:	DECISION ON PETITION TO
Application Number: 10/612481	:	WITHDRAW HOLDING OF
Filing Date: 07/01/2003	:	ABANDONMENT
Attorney Docket Number: ITW-	:	
14146	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PETITION TO WITHDRAW HOLDING OF ABANDONMENT PURSUANT TO 37 CFR 1.181(a)," which is treated as a renewed petition to withdraw the holding of abandonment, filed on October 20, 2008.

The petition is again **DISMISSED**.

A Notice of Abandonment was mailed on May 28, 2008, stating that the application is abandoned in view of applicant's failure to file a proper reply to the Office action mailed on June 7, 2007. The petition to withdraw the holding of abandonment filed on August 21, 2008, was dismissed on October 7, 2008.

Petitioner states, in pertinent part:

In the October 7, 2008 Decision of Applicant's petition, the Office of Petitions stated that the instant application is abandoned because an Appeal Brief was not filed. Applicants respectfully submit that The Office of Petitions has overlooked the OG Notice stated July 12, 2005, which states that the appeal brief will not be due until the later of the two-month period set forth in 37 CFR 41.37 "or one month from the mail date of the decision on the request." Since no panel decision has yet been mailed, the appeal brief is not yet due. Accordingly, Applicant submits that the holding of abandonment in this case is in error.

(emphasis in original)

Petitioner's argument has been considered, but is not persuasive. At the outset, it is noted that on November 13, 2007, a "Notice of Panel Decision from Pre-Appeal Brief Review" was mailed, in response to the Pre-Appeal Brief Request for Review filed on October 19, 2007, stating that the Request is improper and a conference will not be held.

Accordingly, petitioner was provided notice of the panel decision, and was informed that no conference would be held because the proper amount due for the Notice of Appeal fee and extension of time fee had not been paid.

Petitioner was further notified in said Notice of Panel Decision that the time period for filing a response continues to run from the receipt date of the Notice of Appeal or from the mail date of the last Office communication, if no Notice of Appeal has been received.

It is noted that petitioner acknowledged receipt of the Notice of Panel Decision in that a response, including a three (3) month extension of time and the balance due for the Notice of Appeal fee was filed on December 10, 2007.

Further, the *Official Gazette* Notice¹ states that a proper Notice of Appeal must be filed with the request. 37 CFR 41.31(a) states that an appeal to the Board of Patent Appeals and Interferences (Board) must include a notice of appeal plus the fee set forth in 41.20(b)(1). The O.G. Notice further states that: "A request that fails to comply with the above noted submission requirements may be dismissed." Here, applicants clearly failed to comply with the requirements in that the Notice of Appeal fee was deficient. Accordingly, a Notice of Panel Decision was mailed stating that no conference would be held was mailed. Applicant was informed that no conference would be held, and that, therefore, an Appeal Brief must be filed.

In summary, the showing of record is that petitioner was duly informed of the disposition of the application, and failed to timely file the required reply. Accordingly, the application is properly held abandoned.

¹ 1296 O.G. 67.

Petitioner may wish to consider filing a petition to revive the application, accompanied by an appeal brief or a request for continued examination and submission under 37 CFR 1.114.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**²

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

² 37 CFR 1.181(f).